

REMARKS

Claims 1-37 are pending in the application.

Claims 1-37 have been rejected.

Claims 1, 4, 14-19, 21-25, 27 and 34 have been amended.

While not conceding that any cited reference is prior art, but instead to expedite prosecution, Applicants have chosen to overcome the Examiner's rejections by traversing-in-part and providing amendments that more clearly distinguish the claims over the cited art. Applicants' amendments are made without prejudice to Applicants' right to establish, for example in a continuing application, that the cited art is not prior to an invention now or hereafter claimed. Applicants further submit that such amendments find their support throughout the Application. Applicants also refer the Examiner to remarks made in response to prior Office Actions and incorporate those remarks herein in their entirety.

Rejection of Claims Under 35 U.S.C. §103

All the claims of the present Application stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,361,359 issued to Tajalli *et al.* ("Tajalli") in view of at least U.S. Patent 5,812,981, issued to Noguchi *et al.* ("Noguchi"). Applicants respectfully traverse this rejection.

In order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). This requires: (1) the reference(s) must teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3)

there must be a reasonable expectation of success. *See* MPEP 2143; MPEP 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

Independent Claim 1, as amended, contains limitations requiring an application program to comprise the following:

- One or more business components;
- Means for selecting a business component to be audited from the one or more business components;
- Means for selecting one or more selected operations on the business component to be audited; and
- Means for creating an audit trail for the application program.

See Claim 1 (as amended). Applicants respectfully submit that Tajalli does not disclose several of these limitations and therefore cannot anticipate this claim as suggested by the Final Office Action.

Given the similarity of language for certain elements within Tajalli's disclosure to the terminology used in the present claims, it is necessary to provide the relationships between Tajalli's elements and the claimed elements as referenced by the Office Action. The Office Action equates the claimed application program to Tajalli's "assured audit (AA) system" which collects audit information about the activities of ordinary users and application programs. *See* Tajalli 6:63-65; *see also* Final Office Action, p. 1. The Office Action relates the claimed business components to Tajalli's application programs 514 and also Noguchi's business application programs. *See* Final Office Action, p. 2 (quoting Tajalli 15:63-68 with emphasis on "application programs 514"). The Office Action also equates the claimed operations to Tajalli's "activities of all application programs 514. *See* Final Office Action, p. 2 (quoting Tajalli 15:15-20 with emphasis on "activities of all applications programmed"). In the discussion presented

below, Applicants will refer to the application programs disclosed in Tajalli (and equate it to the claimed business components) as “Tajalli’s application programs” in order to distinguish Tajalli’s application programs (equated to the AA system).

Claim 1, as amended, requires the claimed application program to comprise one or more business components, and so, that the application has the ability to audit itself. Applicants respectfully submit that Tajalli’s AA system is not comprised of Tajalli’s application programs. As an initial matter, Tajalli Figure 7 is disclosed to illustrate the AA system. Figure 7 does not illustrate any of Tajalli’s application programs to be part of the AA system. This should be contrasted with Tajalli Figure 2, illustrating a high integrity system embodiment (which does not provide auditing), which explicitly does include applications. *Compare* Tajalli Fig. 2 with Tajalli Fig. 7. Thus, Applicants submit that if Tajalli had intended Tajalli’s application programs to be part of Tajalli’s AA system, Tajalli would have illustrated those application programs as part of the AA system in Figure 7.

The AA system is disclosed in Tajalli as an operating system that can be used to perform auditing tasks, either on activities of ordinary users or application programs or on system status. *See* Tajalli 15:60-16:9. Tajalli’s disclosed application programs are equated within Tajalli to “ordinary users” with regard to the auditing tasks. *See* Tajalli 15:15-20. Since Tajalli’s AA system cannot comprise ordinary users, nor does it comprise the disclosed application programs. Further, Tajalli establishes that the application programs and users cannot affect auditing or storage of auditing. Tajalli 15:21-25. Since the AA system is disclosed by Tajalli as providing auditing, the AA system cannot be comprised of application programs that cannot affect auditing. Therefore, Applicants respectfully submit that the AA system cannot be interpreted as comprising Tajalli’s application programs, and so that cited portions of Tajalli do not disclose

the claimed “application program [AA system] comprising one or more business components [Tajalli’s application programs].”

The Office Action further indicates that an inclusion of Tajalli’s application programs in the AA system is implicit. *See* Final Office Action, p. 2. But given that Tajalli itself explicitly excludes the application from the AA system (*Compare* Tajalli Fig. 2 with Tajalli Fig. 7), Applicants respectfully submit that the Office Action mischaracterizes Tajalli’s disclosure. In order for a proposition to implicitly follow from a disclosure, that proposition must necessarily follow from the disclosure. The Final Office Action provides no discussion of why the AA system must necessarily be comprised of Tajalli’s application programs, especially in light of Tajalli’s explicit disclosure to the contrary. The Office Action makes no claim that Noguchi cures this infirmity. For at least these reasons, Applicants respectfully submit that Tajalli, neither alone nor in combination with Noguchi, provides disclosure of “an application program comprising one or more business components” as claimed.

Claim 1 further includes a limitation of “an application program comprising...means for selecting a business component to be audited....” The Final Office Action cites to the following passage as providing such disclosure:

The first type of auditing, referred to as user activity auditing, tracks operating system requests made by ordinary users 126 and application programs 514. Examples of operating system requests are login attempts, file accesses and execution of programs under a privileged user identifier (e.g., Unix root).

Tajalli 15:63-16:1. The cited section states that the AA system, when engaged in “user activity auditing,” “tracks operating system requests made by ordinary users 126 and application programs 514.” Such tracking is not the claimed auditing of a business component, as claimed, but instead is tracking of the effect of users and application programs within the operating

system itself. The Office Action does not cite to Noguchi as remedying this disclosure deficiency in Tajalli.

Claim 1 also contains a limitation directed toward “an application program comprising...means for selecting one or more selected operations on the business components to be audited.” The Final Office Action cites to the following passage as providing disclosure of this limitation:

The auditing of the second embodiment is particularly characterized by two key features. First, the second embodiment audits activities of all application programs 514 and ordinary users 128, including those privileged with respect to the underlying operating system (e.g., those having Unix root privilege).

Tajalli 15:15-20. Applicants note that this section cited in the Final Office Action is substantially the same as that quoted for the means for selecting a business component limitation. But the claim requires both a means for selecting business components to be audited and a means for selecting one or more selected operations on the business components to be audited; thus, a business component and an operation on the business component are not the same thing. Since the section of Tajalli cited for both the means for selecting a business component and the means for selecting one or more selected operations on the business component are substantially the same, this disclosure cannot provide disclosure of both limitations, and, in fact, fails to do so. The Final Office Action does not provide any citation to Noguchi for the proposition that Noguchi provides disclosure of this missing disclosure. Applicants respectfully submit that that Final Office Action does not establish the presence of the above limitations in Tajalli or Noguchi, alone or in combination.

The burden is on the Examiner to support a case of obviousness, including whether the prior art references teach or suggest all of the claim limitations. *See* MPEP 706.02(j). For the

reasons presented above, neither Tajalli nor Noguchi, alone or in combination, teach these limitations of Claim 1. Independent Claims 14 and 24 include limitations of substantially the same scope as those of independent Claim 1 discussed above. Therefore, for at least the reasons discussed above, Applicants respectfully submit that neither Tajalli nor Noguchi, alone or in combination, teach these limitations of independent Claims 14 and 24.

Applicants also respectfully submit that the Office Action does not satisfy the burden of factually supporting the alleged motivation to combine the two references. This duty may not be satisfied by engaging in impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the references. The Examiner must therefore provide evidence to suggest the combination and “[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” *See In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Further, the Office Action does not establish that such a combination of the teachings of these references would meet with success, as required.

The Office Action states that Noguchi should be combined with Tajalli because Tajalli may be employed in a business context and therefore any components within Tajalli would be “business components.” But such a rationale ignores the subject matter content of Noguchi and Tajalli. As discussed above, Tajalli purports to relate to, at least in the cited embodiment, an assured audit system that provides security protection for a computing environment “by providing restrictions which cannot be changed by any application or ordinary user.” *See, e.g.*, Tajalli 6:1-2. Noguchi, on the other hand, relates to providing “a method of creating an object oriented system which is arranged to easily create a system for doing general processes concerning data items, in addition to a data item treated by each GUI part on a screen.” *See, e.g.*, Noguchi 1:58-62. While mention is made of “a business application” which is configured of

business software (Noguchi 4:27-28), there is no connection made within the cited section of Noguchi to either an auditing system or a security system as disclosed in Tajalli. Thus, Applicants respectfully submit that there is no reason within the references to combine Tajalli with the business software disclosed in Noguchi.

Applicants respectfully submit that therefore the argument raised in the Final Office Action fails to establish a *prima facie* case of obviousness and runs perilously close to a forbidden hindsight analysis of the references. The Office Action makes no showing of a motivation to combine Tajalli with Noguchi from within the references themselves; therefore, it must be presumed that there is none. It is well-established that the best defense to hindsight is a “rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references.” *See Ecolchem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371 (Fed. Cir. 2000).

For at least the above reasons, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness of Independent Claims 1, 14, 24, and all claims dependent upon them, and that they are in condition for allowance. Applicants therefore request the Examiner’s reconsideration of the rejections to those claims and an indication of the allowability of same.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5090.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop RCE, COMMISSIONER FOR PATENTS, P. O. Box 1450, Alexandria, VA 22313-1450, on June 19, 2006.

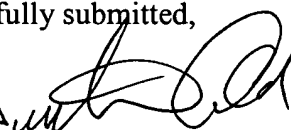


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Date of Signature

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